

FINDING OF EMERGENCY

Pursuant to Section 4783, of the Welfare and Institutions Code, the Family Cost Participation Program is being implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code. This program mandates that families, who are financially able, participate in the cost of three regional center services (respite, day care, and camping) provided to their children. This program is developed in a manner that will not create an unacceptable financial burden, and will maintain the integrity of the family and encourage families to continue to care for their children in their own home. This program will be administered by the State's regional centers commencing January 1, 2005.

Background:

California provides services and supports to people with developmental disabilities through five State-operated developmental centers, two State-operated community facilities, and 21 regional centers. In 1969, the enactment of the Lanterman Mental Retardation Services Act, subsequently renamed the Lanterman Developmental Disability Services Act (Lanterman Act) created the nation's only system of entitlements to services for persons with developmental disabilities. This meant that any service identified in the consumer's Individual Program Plan (IPP) was to be provided at no cost, with the exception of the Parental Fee Program for minors living in 24-hour, out-of-home facilities, and a subsequent amendment to include parental responsibility in sharing in the cost of diapers for children birth to three years of age and for a portion of day care services. At the time this probably did not seem too extravagant considering the relatively small number of clients being served. However, over the years, those numbers have risen considerably and regional centers now serve approximately 190,000 consumers with an additional 3,500 in state developmental centers.

In response to the State's current fiscal crisis, the prior Administration sought to develop a system of cost participation from the families of children ages three through 17 years who live in the family's home, receive services through a regional center, and are not Medi-Cal eligible. The 2003-04 Governor's Budget included a Budget Change Proposal outlining the design of the cost participation system and the amount of revenue that would be generated. The Department of Developmental Services (Department) considered a number of options for the implementation of a family cost participation program, including one that would be administered by the State, and included both a co-payment for services and an enrollment fee that would offset the State administrative costs. This proposal would have resulted in an increase in the State workforce and administrative costs, required access to Franchise Tax Board (FTB) records, and required the Department to collect fees from families; therefore, it was determined that this alternative was not feasible under the guiding principles. After careful consideration, including input from stakeholders in the developmental services system and the survey results (approximately 28 percent) from parents affected by the system, the Department proposed to implement a Family Cost Participation Program (FCPP) without an enrollment fee through the regional center system.

This proposal would not increase the state workforce, does not require access to FTB records and does not entail the collection of monies by the State or the regional center. Further, it is consistent with the overall guiding principles that consumers with developmental disabilities will continue to receive needed services included in their Individual Program Plan (IPP) and families who are financially able to do so, will participate in the cost of those services. In addition, this proposal limits the cost participation assessment to three services: respite, day care, and camping. Limiting the services ensures that the consumers' health and safety will remain protected. The FCPP would be administered by each regional center after the necessary services and supports are identified and included in the IPP and the level of the family's participation is determined based on their ability to pay. It was determined that there would be no enrollment fee assessed on the family as this process would be costly to administer at the regional centers and would require the collection of revenue. As envisioned, the regional center would pay its portion of the authorized services, and the family would then purchase the remaining authorized services directly from the providers. There would be no revenue collected by the regional center.

When developing the Family Cost Participation Program Proposal the following principles were considered:

- All families who are financially able to participate in the cost of services provided to their children should do so.
- Family cost participation shall be developed in such a manner that will not create an unacceptable financial burden, will maintain the integrity of the family, and encourage families to continue caring for their children in their own home.
- Family cost participation will not compromise the health and safety of consumers receiving services.
- The assessment of family cost participation will not impact the IPP process that reflects the consumers' goals, objectives, and services and supports. The families' responsibility will be applied as part of the purchase of services.
- Consideration will be given to the number of family members dependent on the income and the number of children who receive services through the regional center, while either in the family's home or out of home, including developmental centers.
- The system must be simple and cost effective to administer.
- The amount of the family cost participation assessment will be less than the amount of the parental fee for 24-hour, out-of-home placement in order to encourage families to continue caring for their children in their own home.
- The system must not affect the Department's eligibility for other funding sources (i.e., waivers, Medi-Cal, etc.)
- The system must react to changes in family economic conditions or unforeseen, unusual family hardships, and allow for the re-determination of the level of cost participation based on these changes.

The following facts constitute the emergency:

1. Each regional center shall be responsible for administering the Family Cost Participation Program commencing January 1, 2005.
2. Legislation provided for Emergency Rulemaking Authority in Welfare and Institutions Code, Section 4783(l), exempting the Department from describing facts showing a need for immediate action.
3. Emergency regulations will implement regional center purchase of services savings attributable to this program.

Authority and Reference:

Authority: Section 4783, Welfare and Institutions Code.

Reference: Section 4512, 4646(b), 4677, 4685(c)(6), 4782, 4784, Welfare and Institutions Code, Section 1915 (c)(3), Social Security Act, Section 4442.2, California State Medicaid Manual.

Informative Digest:

The Family Cost Participation Program, under the direction of the Department of Developmental Services, establishes a cost participation to parents, as defined in Section 50215 of Title 17 of the California Code of Regulations, who have a child with a developmental disability, is three through 17 years of age, lives in the parent's home, is not eligible for Medi-Cal, and receives services and supports purchased through the regional center. Family cost participation assessments will only be applicable to respite, day care, and camping services that are included in the child's IPP, and will be adjusted to family size and gross annual income.

Under the FCPP, the child's need for supports and services will be assessed during the IPP process. The percentage of family cost participation will be determined on a Family Cost Participation Schedule established by the department and used by regional centers. This schedule is reflective of the Federal Poverty Guidelines as adjusted for family size and scaled by income levels beginning at 400% of the federal poverty level, and establishes the lowest family cost participation at five percent (5%).

Each regional center shall be responsible for administering the FCPP, including but not limited to, assessing the appropriate level of parent's participation, and notifying the parents of the assessed amount. If there is more than one minor child living in the parents home and receiving in-home services and supports paid for by the regional center, or placed in a 24-hour out-of-home placement, including a developmental center, the assessed amount will be adjusted accordingly.

The regional centers shall:

- Inform parents that qualify under the FCPP they will be required to participate according to the FCP Schedule.
- Inform parents that proof of their gross annual income will be due to the regional center within ten (10) working days of the date of the parents' signatures on the IPP completed for their child.

- Notify the parents of their assessed level of cost participation within ten (10) working days of the receipt of the parents' completed documentation.
- Provide a process for the regional center executive director to adjust the level of cost participation in accordance with the California Code of Regulations.

Parents shall:

- Self-certify their gross annual income to the regional center by providing copies of W-2 Wage Earners Statement, payroll stubs, a copy of the prior year's State income tax return, or other documentation, and proof of all other income within ten (10) days of the date of the parents' signatures on the completed IPP.
- Notify the regional center when there is a change in family income that would result in a change of the assessed amount of cost.

Adjustments may be made by the regional center executive director to the assessed amount of the family cost participation for substantiated unavoidable and uninsured catastrophic loss that would temporarily limit the ability of the parent's ability to pay and create a direct economic impact if the amount were not reduced.

Family cost participation assessments may be updated if there is an ongoing reduction or increase in the gross annual income upon which the amount of the family cost participation was determined, or a reduction or increase in the amount of services provided to the consumer pursuant to a change in the IPP, or a change in family size.

Plain English Summary:

The Welfare and Institutions Code (WIC), Section 4783, establishes the Family Cost Participation Program (FCPP) and provides the specific authority for parental financial responsibility, for children age three through 17 years old who live in the parent(s) home, receive services and supports purchased through a regional center; and are not eligible to receive services under the Medi-Cal program. Under this law, parents shall be responsible for sharing the cost of services and supports for respite, day care, and camping that are purchased by the regional center for their children.

The law requires that the Department of Developmental Services (Department) develop and establish a Family Cost Participation Schedule, which will be used by regional centers to assess the share of the parent(s) participation. The Schedule will begin at 400 percent of the Federal Poverty Guideline, and will be adjusted for family size and income levels.

Each regional center shall be responsible for administering the FCPP, including but not limited to, assessing the appropriate level of parent(s) participation, and notifying parent(s) of the assessed amount. If there is more than one minor child living in the parent(s) home and receiving in-home services or supports paid for by the regional center, or placed in a 24-hour out-of-home placement, including a developmental center, the assessed amount will be adjusted as follows:

1. Parent(s) with two children shall have an assessed rate reduced by 25 percent for respite, day care, and camping services in each child's Individual Program Plan (IPP) for each child living at home.
2. Parent(s) with three children shall have an assessed rate reduced by 50 percent for respite, day care, and camping services in each child's IPP for each child living at home.
3. Parent(s) with four children shall have an assessed rate reduced by 75 percent for respite, day care, and camping services in each child's IPP for each child living at home.
4. Parent(s) with more than four children shall be exempt from participation in the FCPP.

Providers of respite, day care, or camping services shall not charge a rate for the parents' share of cost that is higher than the rate paid by the regional center for its share of cost.

Regional Centers shall:

- Inform parents that qualify under the FCPP that they will be required to participate according to the attached current schedule.
- Inform parents that proof of their gross annual income will be due to the regional center within ten (10) working days of the date of the parents' signatures on the IPP completed for their child.
- Notify the parents of their assessed level of cost participation within ten (10) working days of the receipt of the parents' completed documentation.
- Provide a process for the regional center executive director to adjust the level of cost participation in accordance with the California Code of Regulations.

Parents shall:

- Self-certify their gross annual income to the regional center by providing copies of W-2 Wage Earners Statement, payroll stubs, a copy of the
- prior year's State income tax return, or other documentation, and proof of all other income within ten (10) working days of the date of the parents' signatures on the completed IPP.
- Notify the regional center when there is a change in family income that would result in a change of the assessed amount of cost.

Assessment:

The assessment of family cost participation (FCP) for families whose current annual gross income is 400 percent or more of the Federal Poverty Level (FPL), as adjusted by family size, would be on a sliding-scale basis from 5 percent to 80 percent. (See attached FCP schedule.) Parents may appeal the amount of the cost participation to the regional center executive director within 30 days of notification of their amount of the assessed cost participation.

Small Business Determination:

The Department has determined that the proposed regulations may affect small businesses. Parents who are assessed a FCP amount will be required to pay vendors directly for services and supports provided to their child. Parents who fail to make payment to vendors for services provided or parents who elect not to purchase the portion of services for which they are financially liable, may result in a financial impact on those small businesses.

Local Mandate and Fiscal Impact Determinations:

The Department has determined that the proposed regulatory actions do not impose: 1) a mandate on local agencies or school districts; 2) costs to any local agency or school district that must be reimbursed in accordance with Government Code section 17500 through 17630; 3) other nondiscretionary costs or savings imposed on local agencies; or 4) costs or savings in federal funding to the state. The department has determined that the proposed regulatory actions do impose significant savings to state agencies. Based on assumptions used for the 2004-05 May Revision, the fiscal year 2004-05 total net savings is \$0; however the fiscal year 2005-06 total net savings is projected to be \$2,231,000.

Economic Impact and Business Assessment:

The Department has determined there will be no economic effect on the creation of new jobs and new businesses within the State, nor on the expansion of businesses currently doing business within the State of California.

The Department has determined that the proposed regulations will not have: 1) significant adverse economic impact on business including the ability of California businesses to compete with businesses in other states; 2) a significant potential cost impact on private persons or directly affected businesses; or 3) a significant effect on housing cost.